

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.18063 of 1998

Dated:27.04.2007

Between

M.Venkat Rao

.....Petitioner

and

1.The Singareni Collieries Company

Limtied, Bellampalle, Adilabad

Rep., by its General Manager

And others.

...Respondent

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.18063 of 1998

ORDER

This writ petition is filed seeking a Mandamus to declare the action of the respondents in not making the petitioner unfit to continue in the Job from 6.12.1997 as per the opinion of the Cardiologist, Osmania General Hospital, Hyderabad nor allowing him to continue in the job from 6.12.97 nor paying wages from the said date till 30.06.1998 as arbitrary and illegal.

It appears that the petitioner joined the services of the respondent-Company on 5.12.1957. As on the date of filing of the writ petition, he was working as a Special Grade Clerk. While that being so, since the petitioner fell sick, the 3rd respondent referred him to

Osmania General Hospital for check up by a Cardiologist as he complained of chest pain. Dr.Sudhir R.Naik, Cardiologist and Head of the Department of Cardiology of Osmania General Hospital, Hyderabad examined the petitioner on 8.12.1997 and declared him unfit to continue in the job. The third respondent after receiving the report vide letter dated 27.12.1997 referred the petitioner to the 4th respondent. The 4th respondent through letter dated 2.1.1998 has requested the 2nd respondent to send certain particulars about the petitioner. Later, nothing was heard from the respondents. However, the petitioner learnt from the office of the 2nd respondent that the particulars called for by the 4th respondent were also furnished on 5.1.1998 itself. But, there was no information from the respondent-company with regard to fitness of the petitioner. Therefore, the petitioner approached both second and third

respondents requesting them to declare him either fit or un-fit so as to enable him to draw salary or to apply for pension and other terminal benefits. But, nothing was informed positively, but they were informed him that they have to get a written communication from the 4th respondent. Hence, the writ petition.

A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner. At paragraph 6 of the counter, the contention of the petitioner that he was not being allowed to perform his job was denied. In fact, he has absented from duty since 6.12.1997. The petitioner had obtained a letter dated 16.2.1997 from the Head of Department stating that he was absent from 6.12.1997. If it is the case of the petitioner that he has been prevented from attending to work, then the letter dated 16.2.1997 totally disproves the same. As the petitioner was continuously remained absent, in spite of being declared medically fit, the letter of

superannuation was served on 24.4.1997 stating that he is entitled to receive his terminal benefits. Even during the absenteeism period, he had taken letters from Medical Superintendent of Bellampalli to visit Sarojinidevi Eye Hospital, Hyderabad on 5.3.98, 24.3.1998, 23.4.1998 and 20.5.1998. That apart, he has also taken a letter on 10.4.1998 to visit the Osmania General Hospital, Hyderabad. The petitioner wants to cover up his absenteeism by saying that he was prevented from duty. After the surgery, he was referred to Main Hospital, Kothagudem, where he was declared fit vide letter dated 3.5.1997. Again, he was referred to Main Hospital, Kothagudem, vide letter dated 29.8.1997 seeking opinion for medical fitness and he is still continuing in the sick list. Since the Medical Superintendent informed the petitioner that he is still in the sick list, he was again examined by the Medical Board at Kothagudem, who found him fit for duty vide

letter dated 16.9.1997. Therefore, there was no necessity for the respondents to issue fresh proceedings of fitness. Hence, the petitioner absented himself from duty from 6.12.1997 to 30.6.1998 and thus he is not entitled for any salary during the said period.

Learned counsel for the petitioner states that the petitioner was referred to Cardiologist at Osmania General, Hyderabad, who, in turn, certified that the petitioner is unfit to hold the post. Thereafter, the petitioner was again referred to the Area Hospital, Kothagudem, but nothing was informed about his fitness or otherwise. Therefore, he had to go around the office of the 2nd and 3rd respondents. Once, the petitioner was declared unfit by a Cardiologist & Head of the Department Cardiology, Osmania General Hospital, Hyderabad, it is the bounden duty of the respondent-Company to verify the fact and permit the petitioner to join duty. But that was not done. On the other hand, they relied upon

the examination conducted earlier stating that the petitioner was declared fit and it is for the petitioner to join the duty.

Per contra, the learned counsel for the respondents states that nothing prevented the petitioner from joining duty irrespective of the fact whether he was declared unfit by the Cardiologist & Head of the Department Cardiology, Osmania General Hospital, Hyderabad or not. Since the petitioner was declared fit in the Medical Examination conducted by the Area Hospital, Kothagudem as early as on 16.9.1997, there was no necessity of declaring the petitioner fit again.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

Admittedly, the petitioner was referred by the Area Hospital, Kothagudem, to the Cardiologist and Head of the Department of Cardiology of Osmania General Hospital,

Hyderabad, who certified that the petitioner is unfit to hold the post. Again the third respondent vide letter dated 27-12-1997 referred the petitioner to the fourth respondent-Chief Medical Officer, who in turn called for certain information from the second respondent, and he sent certain particulars. But nothing happened thereafter. Under those circumstances, the stand taken by the Management that nothing prevented the petitioner from joining duty from 6.12.1997 till 30.6.1998 seems to be unreasonable. It is the opinion of the Cardiologist and Head of the Department of Cardiology of Osmania General Hospital, Hyderabad, to whom the petitioner was referred for treatment and fitness, that the petitioner is not fit to hold the post. There may be different standard of health requirements for the respondent-Management to refer the petitioner to their own hospital to find out whether the petitioner was fit or unfit to hold the post. Therefore, the third respondent

referred him to the Cardiologist and Head of the Department of Cardiology of Osmania General Hospital, Hyderabad. Having done so, the respondent-Management could have accepted the opinion of the Cardiologist and Head of the Department of Cardiology of Osmania General Hospital, Hyderabad, but they relied on the earlier certificate dated 1.6.97 issued by the Area Hospital, Kothagudem, wherein the petitioner was declared fit. Therefore, the stand taken by the Management that the petitioner is not entitled for wages from 6.12.1997 to 30.6.98, is unreasonable and cannot be countenanced.

If really the petitioner absented on his own, nothing prevented the Management from taking action against the petitioner. No such action was taken against the petitioner. The petitioner has all along been going around the offices of the second and third respondents.

In view of the above, I am of the opinion that the petitioner is entitled for salary from

6.12.97 to 30.6.98. The respondent-
Management shall settle the same and pay it
to the petitioner within a period of two months
from the date of receipt of a copy of this order.

Writ petition is accordingly disposed of.
No costs.

27-04-2007

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